

(1967) 07 KAR CK 0001

In the Karnataka High Court

Case No : S.T. Rev. No's. 11 and 12 of 1965-66, S.T.A. No's. 15 and 16 of 1964-65 and Sales Tax Revision Petition No. 15 and 16 of 1967

Banwarilal Nemani

APPELLANT

Vs

State of Mysore

RESPONDENT

Date of Decision : 19-07-1967

Acts Referred:

Mysore Sales Tax Act, 1957 — Section 12 (2), 12 (3), 22 (1), 23

Citation : (1968) 22 STC 55

Hon'ble Judges : M. Sadanandaswamy, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : W.K. Joshi, for the Appellant; Shantaraju, for E.S. Venkatramaiah, High Court Special Government Pleader, for the Respondent

Judgement

Somnath Iyer, J.—These two revision petitions presented u/s 23 of the Mysore Sales Tax Act, 1957, involve the interpretation of sections 20 and 22 of the Act, as they stood before their amendment by the Mysore Sales Tax (Amendment) Act, 1963 (Mysore Act No. 9 of 1964). This is how the question arises.

2. In respect of the sales of declared goods by the petitioner, the Commercial Tax Officer assessed the turnover in respect of the assessment years 1958-59 and 1959-60. There was a claim by the petitioner for a refund under the first proviso to section 5(4) of the Act, which directs the refund of the tax paid in respect of the sale or purchase of declared goods which are subsequently sold in the course of inter-State trade or commerce. The refunds, according to the petitioner, were refused by the Commercial Tax Officer and so, he appealed to the Deputy Commissioner u/s 20. When those appeals were dismissed, he appealed further to the Sales Tax Appellate Tribunal u/s 22. That Tribunal, which was of the view that those appeals did not lie, dismissed them. There was an unsuccessful endeavour by the petitioner to have the orders of the Tribunal reviewed, and so these two revision petitions, in which he called in question the orders made by the Tribunal on the review applications.

3. Now, the ground on which the Tribunal declined to hear the appeals was, that under the provisions of section 22 of the Mysore Sales Tax Act, 1957, as it stood before its amendment by Mysore Act No. 9 of 1964, an appeal could be preferred only "from an order relating to assessment passed by the Deputy Commissioner whether on appeal u/s 20 or suo motu under sub-section (1) of section 21" and that the order passed by the Deputy Commissioner in the appeals preferred by the petitioner was not an order "relating to assessment". The Tribunal stated :

"Assessment does not include refund. It is therefore to be held that no appeal lies to this Tribunal in the matter of refund of sales tax under the provisions of law in force in the periods concerned."

4. It would now be necessary to refer to the provisions of section 20 of the Act as it stood before its amendment and under which the petitioner appealed to the Deputy Commissioner. The relevant part of that section reads :

"20. Appeals. - (1) Any assessee objecting to an assessment made on him under sub-sections (2) and (3) of section 12 may within thirty days from the date on which he was served with notice of assessment, appeal to such authority as may be prescribed."

5. Section 22(1) of the Act as it then stood reads :

"22. Appeal to the Appellate Tribunal. - (1) Any assessee objecting to an order relating to assessment passed by the Deputy Commissioner whether on appeal u/s 20 or suo motu under sub-section (1) of section 21, may, if the assessee has not preferred an application for revision of the order under sub-section (2) of section 21, appeal to the Appellate Tribunal within sixty days from the date on which the order was communicated to the assessee."

6. Since the petitioner made no application for the revision of the orders made by the Deputy Commissioner, his appeals to the Appellate Tribunal would be within this sub-section, if the order made by the Deputy Commissioner has the status of an order "relating to assessment". The question whether it has, depends partly on the interpretation to be placed on the provisions of section 20, as it stood then, under sub-section (1) of which an appeal could be preferred only from an assessment made under sub-section (2) or sub-section (3) of section 12. If the order by which the Commercial Tax Officer refused the refund can be regarded as an assessment either under sub-section (2) or sub-section (3) of section 12, the appeals preferred to the Deputy Commissioner were plainly available and in consequence, the appeals to the Tribunal were similarly competent. In an appeal u/s 20(1) to the Deputy Commissioner the order from which the appeal is preferred should be an "order of assessment" and, in an appeal to the Appellate Tribunal u/s 22(1), it should be an order "relating to assessment". But, it is obvious that if an appeal to the Deputy Commissioner u/s 20(1) is possible, the appeal to the Tribunal from an order in that appeal would be equally possible.

7. Now, section 5 is the charging section and sub-section (4) of that section directs the payment of tax on the declared goods enumerated in the Fourth Schedule to the Act, at the rates and points specified in the relevant columns of that Schedule. But to this part of the charging section, there is a proviso which is the first proviso to that sub-section which directs a refund of the tax so paid on production of proof that subsequent to the payment of tax in respect of the sale or purchase of such declared goods, they were subsequently sold in the course of inter-State trade or commerce. So, the first proviso to sub-section (4) is a part of the charging section, and what is accomplished by that proviso is a suitable modification of the assessment through a refund which is directed by it. Section 12 prescribes the manner of assessment and sub-section (2) of that section authorises the assessing authority to make an assessment on the basis of the return submitted by the dealer if he is satisfied that it is correct and complete. Sub-section (3) authorises an assessment to the best of his judgment, if the dealer does not submit a return or submits one which is incorrect or incomplete. Section 20 authorises an appeal from an assessment so made whether it is made under sub-section (2) or sub-section (3) of section 12.

8. So, it would be seen that when an assessment is made under sub-section (2) or sub-section (3) of section 12 and that assessment determines the tax payable in respect of the declared goods of which section 5(4) speaks, the assessment so made is of course appealable u/s 20. But, if after that assessment is made the dealer claims a refund under the first proviso to section 5(4) on the ground that the declared goods were subsequently sold in the course of inter-State trade or commerce, the assessing authority is under a statutory duty to make a refund of the tax paid in respect of those goods, if the subsequent sale in the course of inter-State trade or commerce is proved, and, when that refund is made, the tax determined by the assessment abates to that extent and the assessment stands altered in obedience to the proviso which is part of the structure of the charging section. That modified assessment which supersedes the old assessment and takes its place acquires in that way the status of an assessment made u/s 12. A proceeding in which a refund claimed under the proviso is refused or allowed is in truth a part of the assessment proceeding which continues until the refund is allowed or refused. And when it is allowed, the determination of the tax which stood controlled by the proviso suffers displacement to that extent, and, in consequence, affects the assessment by which that determination had been previously made. The altered assessment which so comes into being becomes then the real assessment u/s 12 for all purposes. Similarly, the refusal of a refund, which involves an adjudication as to the applicability of the proviso which directs a refund, on a principle which at that stage, in effect, governs incidence is one further step in the assessment and so a part of it within the meaning of section 12.

9. That this is the true meaning to be given to the provisions of sections 20 and 22 of the Act as they stood before their amendment, becomes clear from the amendment made to those two sections by which an appeal could now be

preferred u/s 20 from any order under the Act by which the appellant is affected, and an appeal u/s 22 from any order passed by the Deputy Commissioner or Assistant Commissioner under sections 20 and 21. The sections, as they now stand amended, do not speak of an appeal from an "order of assessment" or from an order "relating to assessment" as the old Act reads, thus demonstrating that the legislative intent was to provide for an appeal even from an order by which a refund under the first proviso to section 5(4) is refused. The view that we take was also the view taken by the High Court of Madras in *The Deputy Commissioner of Commercial Taxes v. Muthuswami Chettiar* [1964] 15 S.T.C. 732.

10. So, the complaint in the petitioner's appeals against the refusal of the refund was in reality a complaint against the assessment as it stood after such refusal, and so, the appeals to the Deputy Commissioner were complaints under the old 20th section. And, when the Deputy Commissioner dismissed those appeals which concerned that assessment, his order was one "relating to assessment" within the meaning of the old 22nd section and became appealable under that section.

11. We are, therefore, of the view that the Sales Tax Appellate Tribunal was in error in thinking that the appeals presented to it were incompetent. We, therefore, set aside the orders made by the Tribunal and remit the appeals to it for being disposed of on their merits and according to law.

12. Before concluding, we must observe that according to Mr. Joshi, the learned Advocate for the petitioner, the refusal of the refund was made by the Commercial Tax Officer by the very orders of final assessment on 23rd April, 1962, but those orders do not speak of a claim for any refund and there is no discussion of any such claim. But in the order made by the Deputy Commissioner in the appeals preferred by the petitioner u/s 20, there is a discussion of that claim. Mr. Shantharaju, the learned Government Pleader, submitted that the applications for refund were presented only in February, 1963, and that those applications were available in the file. So, he submitted that no orders could have been made by the Commercial Tax Officer on those applications on 23rd April, 1962, when he made the final assessment. But, with this aspect of the matter, we have no concern in these revision petitions. The Deputy Commissioner did discuss in his appeal the sustainability of the claim for a refund made by the petitioner and negated it. So, his order was one "relating to assessment" and became an appealable order u/s 22(1). If the Sales Tax Appellate Tribunal when it hears the appeals discovers that the applications for refund are still pending before the Commercial Tax Officer, and that they have not yet been disposed of, what it should do is to set aside the order made by the Deputy Commissioner in each of the appeals and to direct the Commercial Tax Officer to consider those applications if they are still pending and dispose of them according to law.

13. The Tribunal will now proceed to rehear the appeals as directed. The petitioner will be entitled to his costs in these two revision petitions, those costs being restricted to the court-fee paid on the revision petitions. We make no

direction for payment of Advocate's fee.

14. Petitions allowed and cases remanded.